90-236

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

STEVE JORDAN,
Petitioner

v.

CAMERON IRON WORKS, INC.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

I. Is the administration of an ERISA disability plan, where disability benefits are paid to a claimant then rejected, without any real justification for the change in interpretation and application, "arbitrary and capricious" under the *Firestone* standard of review?

II. If an ERISA plan administrator delegates authority to an agent to handle the administration of benefits, can that administrator then represent to a reviewing Court that it could not be charged with the interpretations, conduct, and/or knowledge of the authorized agent?

III. May a reviewing Court, reviewing an administrator's discretionary interpretations and conduct concerning an ERISA disability plan and a beneficiary's entitlement, ignore the express terms of the plan in question when affirming a summary judgment against a Plaintiff?

IV. Where a union refuses to represent or assist a former employee/member with his claim against the employer for wrongfully denying disability benefits under an ERISA plan called for in a collective bargaining agreement, must an employee resort to arbitration rather than the court for redress?

V. Where a company's ERISA administrative committee fails to apprise a claimant, not represented by a union, of an arbitration requirement in a collective bargaining agreement, may it then rely on the claimant's failure to first seek arbitration as an affirmative defense?

VI. May a company's ERISA administrative committee purport to inform an employee/beneficiary of the procedures involved in the grievance process, leaving out any mention of arbitration, then expect to rely on a claimant's failure to first seek arbitration as an affirmative defense?

VII. Did the Fifth Circuit utilize a proper analysis of the disability plan and the administrator's conduct in determining whether or not the administrator's actions and interpretations were "arbitrary and capricious"?

VIII. Is an ERISA plan administrator charged with knowledge of the employer?

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UNITED STATES STATUTES

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, STEVE JORDAN, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit affirming the ruling of the District Court for the Southern District of Texas, wherein the Court granted a summary judgment in favor of Defendant/ Respondent, CAMERON IRON WORKS, INC., at the same time denying Petitioner's cross motion for summary judgment.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, infra) is reported at 900 F.2d 53. The opinion of the District Court (App. B, infra) is not reported.

JURISDICTION

The judgment of the Court of Appeals (App. A, infra) was entered on May 4, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. Section 1132 (a)(1)(B), states as follows:

> A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

2. Section 301(a) of the Labor Management Relations Act, 29 U.S.C.A. 185(a), states as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT

The pertinent facts of this case necessary for the Court's review are as follows:

1. Statement of Facts From the Record Before the Court

(All citations from the record are from evidence attached to Petitioner's motion for partial summary judgment unless another source is designated.)

From August of 1980 until November 5 of 1982, Petitioner worked for CAMERON IRON WORKS, INC. in jobs requiring strenuous physical activity, including a great deal of heavy lifting, stooping, bending and climbing. On November 4, 1982, Petitioner underwent surgery on his right leg to correct a length discrepancy and thereby alleviate a source of back pain. The operation resulted in substantial pain in Petitioner's leg whenever Petitioner puts real pressure on it. (Affidavit of Petitioner, Steve Jordan, R139-140, App. G, infra) Petitioner was thereby left in a condition where he could no longer perform his previous work tasks. (Jordan Affidavit, R140, also Affidavit of Dr. Andrew P. Kant, R157) Petitioner's physician, Dr. Andrew Kant, diagnosed Petitioner's leg condition as permanent, and has recommended that he only perform light sedentary types of jobs, such as clerical or bench-type work. He has expressly forbidden jobs that require repeated bending, stooping, lifting, or climbing. (Dr. Kant's Affidavit, R157, App. H, infra)

Shortly after Petitioner's operation, Respondent CAMERON IRON WORKS, INC. laid Petitioner off from his employment with Respondent. (Letter of Respondent's

Counsel, Neal Sutton, dated June 27, 1986, denying Petitioner's appeal to the Administrative Committee, R154, App. F, infra) Petitioner began to receive long term disability benefits for his disability under a self-funded disability plan maintained for employees by Respondent pursuant to obligations under a collective bargaining agreement between Petitioner and the I.A.M.&A.W. Union, Local No. 15. (Attached to Respondent's first motion for summary judgment: Affidavit of Paul Perez, Respondent's Manager of Industrial Relations, R500-502; Collective bargaining agreement, R452-498.) John Hancock Mutual Life Insurance Company acted on behalf of Defendant's in providing administrative services for the plan, but did not make any decisions concerning eligibility for benefits. (Perez affidavit, R500-502.)

The disability plan in question stated the following:

> "To be totally disabled and thereby qualify for benefits, the employee must be unable to perform the duties of his/her job, or of any other job offered by the Company . . ."

(From the disability plan attached to, adopted, and incorporated into Respondent's second motion for summary judgment, attachment 1, R289-295, at 291)

Petitioner began to receive disability payments from Respondent on December 16, 1982. Petitioner's doctor, Dr. Andrew Kant, certified to Respondent that Petitioner was able to return to light duty work on April 25, 1983, and July 26, 1983. (App F and App. H, infra) With this knowledge, Respondent continued to make payments until July 13, 1984, when it discontinued Petitioner's benefits. (Id.)

After his benefits were discontinued, Petitioner went to Mr. Tuck, his union representative, for assistance. Tuck informed him that since he was no longer a member of the union, there was nothing the union could do for him. (Petitioner's Affidavit, App. G, p. 24a infra)

Petitioner's attorney pursued an appeal to Respondent's Administrative Committee pursuant to the instructions given him by Respondent's Counsel, Mr. Neal Sutton, in a letter dated May 23, 1986. (Affidavit with attachments of Raymond Dickens, Jr., former counsel for Petitioner, R143-155) Respondent's Administrative Committee then ruled against Petitioner's claim. Respondent's Counsel never gave Petitioner or his Counsel any statement that a further administrative procedure was available to Petitioner, or that it would be desirable or necessary for Petitioner to resort to arbitration. (Sutton letter, App. F, infra) After that rejection, Petitioner filed suit in Texas state district court.

2. Summary of Lower Court Proceedings

Petitioner (Plaintiff) originally filed suit against Respondent and John Hancock Mutual Life Insurance Company, to recover payment for disability benefits denied to Plaintiff by Defendants. (R559-560) Respondent and Hancock removed the action to federal district court based on the preemption of the Labor Management Relations Act, 29 U.S.C. Section 141, et seq., and the Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq. (R549-556) Defendant Hancock was successful in having the court dismiss Plaintiff's claims against it through a motion for summary judgment which was joined by Defendant Cameron. (R347)

On March 6, 1989, Petitioner and Respondent both on the same day filed their respective motions for summary judgment. The court granted Respondent's motion, adopting Respondent's proposed findings of fact and conclusions of law as its ruling. (App. B, C and D, infra). Petitioner filed his motion for rehearing (R11-15), which was in turn also denied. (App E, infra). Petitioner appealed the ruling to the 5th Circuit Court of Appeals, which affirmed the lower court ruling. (App. A, infra).

REASONS FOR GRANTING WRIT

The primary reason for this Court granting writ is to alleviate the uncertainty which exists in the law today concerning how a District Court should review an administrator's actions in denying benefits under an ERISA plan, where the "arbitrary and capricious" standard is required by *Firestone Tire and Rubber Co. v. Bruch,* 109 S.Ct. 948 (1989). While that case, handed down by this Court in 1989, clarified the standard of review to be used in cases involving review of an ERISA plan administrator's denial of benefits, it left open the question of what criteria to use in determining "arbitrary and capricious" conduct or interpretation when the plan allows discretion to the administrator.

The Fifth Circuit has evolved a test which, on its face, would appear to be a fair method of reviewing for "arbitrary and capricious" conduct or interpretation. To quote the Court in its ruling:

> "Our cases indicate that in determining the correctness of that conclusion, we should consider: (1) whether the Administrative Committee has given a uniform construction to the plan; (2) whether the

> interpretation is consistent with a fair reading of the plan; and (3) whether the interpretation results in any unanticipated costs. See *Batchelor*, 877 F.2d at 444-45; *Denton*, 765 F.2d at 1304; *Dennard v. Richards Group, Inc.*, 681 F.2d 306, 314 (5th Cir. 1982)."

Jordan v. Cameron Iron Works, Inc., 900 F.2d 53, at 56 (5th Circuit, 1990) (App. A, p. 6a). To further quote the 5th Circuit in *Dennard*, at 314:

> "When the trustee's interpretation of a plan is in direct conflict with express language in a plan, this action is a very strong indication of arbitrary and capricious behavior."

In this case, the 5th Circuit completely ignores the express language of the disability plan in question. The Court admits that ". . . Jordan's position appears to follow from the language of Article VII . . .", yet rules against him because ". . . it asumes that he has a right to be employed by Cameron." *Jordan*, at 57. *See* App. A, p. 9a infra

The plan in question has certain express conditions, which if met, qualify a participant for disability benefits. It also has express conditions for termination of benefits. Continued employment by the Respondent company is not an express condition for continued participation, nor is it an express condition allowing termination. By reading an unwritten assumption into the plan, the 5th Circuit totally ignores the express terms and conditions of the plan.

The ruling will set a precedent for other courts throughout the nation to essentially turn down all applications for review of administrator's interpretations of plans.

Express terms of an ERISA plan may be ignored if an administrator can concoct some form of assumption which would invalidate those terms.

Second, only this Court's grant of a writ of certiorari and review can prevent administrators throughout the nation from playing a "shell game" with administrative agents to avoid the consequences of their actions. The 5th Circuit opinion rules:

> "There is no evidence, however, that the continued payment of disability benefits was the result of a conscious decision by the Administrative Committee." *Jordan,* at 56, App. A, p. 7a infra).

The record is clear, however, that Respondent CAMERON IRON WORKS, INC., was notified of Petitioner's ability to return to light, sedentary work *yet failed to take any action to terminate his benefits.* (Kant Affidavit, App. H, R.272-73, App. F, cited by the Court, 900 F.2d 53, at 57, App. A, p. 7a infra. *See also,* App. F).

This creates an opportunity for administrators of ERISA plans to keep their options open, allowing a change of position concerning qualification for benefits, without being characterized as inconsistent, arbitrary or capricious. After the 5th Circuit ruling, it would be very poor planning for a plan administrator not to use an administrative agent or the company to distribute benefits, thereby allowing for a later change of mind without being held accountable for the previous position. This situation, unless addressed by this Court, will result in "arbitrary and capricious" conduct by administrators toward beneficiaries for years to come, with very little recourse for the individual beneficiary. In summary, beneficiaries will have

little certainty about receiving continued benefits under ERISA plans.

In issuing its opinion, the 5th Circuit stated it would "assume without deciding" that Petitioner was not precluded from bringing his action due to alleged failures to utilize grievance procedures and arbitration procedures spelled out in the collective bargaining agreement between Respondent and Petitioner's union. Petitioner urges this Court to grant writ on these issues, which were not ruled on by the 5th Circuit, in order to affirm the right of an individual to bring an action against an employer directly to our court system when his former union refuses to even assist him with his dispute with the employer. Petitioner also asks that writ be issued to affirm the previous rulings of this Court that employers in such a situation cannot lead an employee to believe that he has exhausted all administrative procedures, then later assert that failure to arbitrate is an absolute bar to the employee's action. Both of these situations are clear from the record in this cause, and both fall under this Court's rulings in *Vaca v. Sipes,* 386 U.S. 171, at 186, 87 S.Ct. 903, at 914, 17 L.Ed.2d 842, at 855; and *Hines v. Anchor Motor Freight, Inc.,* 424 U.S. 554, 96 S.Ct. 1048, at 1058, 47 L.Ed.2d 231 (Petitioner's affidavit, R141, App. G, infra and the letter of Neal Sutton, counsel for Respondent, R272-273, App. F, infra).

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the District Court and of the Court of Appeals in this matter.

DATED: August 2, 1990.

Respectfully submitted,

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APPENDIX A

Steve JORDAN,
Plaintiff-Appellant,

v.

CAMERON IRON WORKS, INC. and
John Hancock Mutual Life Insurance Company,
Defendants-Appellees.

No. 89-2937

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

May 4, 1990.

Employee brought suit against company alleging that termination of his long-term disability benefits violated Employee Retiremnet Income Security Act. The United States District Court for the Southern District of Texas, Kenneth M. Hoyt, J., entered summary judgment in employer's favor. Employee appealed. The Court of Appeals, Reavley, Circuit Judge, held that fair reading of plan supported company's action in terminating benefits to worker, who had been laid off subsequent to commencement of disability benefits, after employer received statement from employee's physician indicating that employee was able to perform light duty work.

Affirmed.

Appeal from the United States District Court for the Southern District of Texas.

Before REAVLEY, JOHNSON, and JONES Circuit Judges.

REAVLEY, Circuit Judge:

Steve Jordan sued Cameron Iron Works, Inc. ("Cameron") after Cameron caused the termination of long-term disability benefit payments to Jordan. The district court granted Cameron's motion for summary judgment after it determined that the decision to terminate benefit payments was not arbitrary and capricious and that, in any event, Jordan was barred from challenging the decision in court. We affirm.

I.

Jordan went to work for Cameron in August of 1980. Jordan continued to perform various tasks for Cameron until November 4, 1982, when he underwent surgery to correct a length discrepancy in his legs that had been causing him back pain. As a result of the operation, Jordan was unable to work. On November 5, 1982, Cameron laid off over five hundred employees, including Jordan, as part of a work force reduction prompted by a downturn in the oil industry. As was contemplated by the disability plan negotiated between Cameron and the International Association of Machinists and Aerospace Workers, Local 15 ("Union"), however, Cameron authorized payment to Jordan of disability benefits, because Jordan was physically unable to work in any type of gainful employment. As early as April of 1983 Jordan's physician concluded that Jordan was capable of limited work activity. *See* R. 158-59. In November of 1983,

Jordan's physician informed Cameron's insurer that Jordan was capable of performing light duty work. R. 271. Cameron's insurer continued to make disability payments to Jordan. In July of 1984, Jordan's physician again indicated that Jordan was capable of performing light duty work, and the insurer ceased making benefit payments. Jordan appealed the decision to terminate his benefits to the Administrative Committee for the disability plan. The committee determined that Jordan was not eligible to receive continued payments, because he could perform light duty work.

Jordan subsequently filed this action pursuant to section 502(a)(1)(B) of ERISA. *See* 29 U.S.C. § 1132 (a)(1)(B). In his amended complaint Jordan contended among other things that under the terms of the long-term disability plan he remained entitled to receive disability benefits. Both Cameron and Jordan filed motions for summary judgment. The district court concluded that Jordan had failed to pursue available grievance and arbitration procedures and held that Jordan was not entitled to challenge the termination of benefits in court. The court also held that the termination of benefits was not arbitrary and capricious and must be upheld even if Jordan's suit was properly brought. Accordingly, the court granted Cameron's summary judgment motion.

II.

We assume without deciding that under the particular circumstances of this case Jordan's failure to take advantage of the available grievance and arbitration procedures did not preclude him from bringing this action. We nevertheless affirm the district court's grant of summary judgment on the alternative ground that the Ad-

ministrative Committee's interpretation of the disability plan was proper.

Section XIII(D) of the disability plan authorized Cameron to provide benefits through a trust arrangement to be administered by an Administrative Committee. Pursuant to this authority, Cameron created an employee benefit trust. Section 3.08 of the trust agreement set forth the powers and duties of the Administrative Committee and provided:

> The Committee shall supervise the operation of the Trust and the administration and enforcement of each Plan according to the terms and provisions hereof and shall have all powers necessary to accomplish these purposes, including, but not by way of limitation, the right, power, authority and duty:
>
> (a) to oversee and supervise the overall operation and administration of the Trust and each Plan;
>
> . . . . .
>
> (h) to construe all terms, provisions, conditions and limitations of the Plan and the Trust. In all cases, the construction of the Plan which is necessary for the Trust to qualify under Section 501 (c)(9) of the Code shall control;
>
> (i) to correct any defect or supply any omission or reconcile any inconsistency that may appear in the Plan or the Trust, in such manner and to such extent as it shall deem expedient to carry the Plan and the Trust into effect for the greatest benefit of all interested parties;
>
> . . . . .
>
> (k) to determine all questions relating to eligibility;
>
> . . . . .

> (n) to make a determination as to the right of any person to a benefit under the Plan and the Trust;
>
> . . . .

R. 303-04. These provisions clearly give the Administrative Committee broad powers to implement the disability plan and evaluate claimants' eligibility for benefits.

[1] The Supreme Court recently held that a denial of benefits challenged under § 1132(a)(1)(B) generally is to be reviewed under a *de novo* standard. *See Firestone Tire & Rubber Co. v. Bruch*, ___U.S.___, 109 S.Ct. 948, 956, 103 L.Ed.2d 80 (1989). However, when a "benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," *id.*, as does the plan involved in this case, courts are to accord substantial deference to the interpretation the administrator gives the employee benefit plan. *See id.* at 954-56, 103 L.Ed.2d 80. In cases in which application of this deferential approach has been found to be appropriate this circuit traditionally has employed a two-step process in analyzing administrators' interpretations of benefit plans. "First, the court must determine the [legally] correct interpretation of the Plan's provisions." *Batchelor v. International Bhd. of Elec. Workers Local 861 Pension & Retirement Fund*, 877 F.2d 441, 444 (5th Cir. 1989); *see Denton v. First Nat'l Bank*, 765 F.2d 1295, 1304 (5th Cir. 1985). If the administrator has not given a plan the legally correct interpretation, the court must then determine whether the administrator's interpretation constitutes an abuse of discretion.[1] *See Batchelor*, 877 F.2d at 442, 444 & n. 10.

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1. Previous cases from this circuit suggested that the court is to evaluate an administrator's decision under the arbitrary and capricious

The district court found that Jordan's "benefits were terminated consistent with the provisions of the plan and the mutual intent of Cameron and the union." R. 50. The court did not undertake an extensive analysis indicating the basis for its determination, but it apparently concluded that the Administrative Committee gave the benefit plan its legally correct interpretation. Our cases indicate that in determining the correctness of that conclusion we should consider: (1) whether the Administrative Committee has given a uniform construction to the plan; (2) whether the interpretation is consistent with a fair reading of the plan; and (3) whether the interpretation results in any unanticipated costs. *See Batchelor*, 877 F.2d at 444-45; *Denton*, 765 F.2d at 1304; *Dennard v. Richards Group, Inc.*, 681 F.2d 306, 314 (5th Cir. 1982).

[2] Jordan contends that the Administrative Committee has not construed the plan uniformly. Jordan bases his argument on the company's failure to terminate benefits in 1983 when Jordan's physician first indicated that Jordan was capable of performing light duty work. There is no evidence, however, that the continued payment of disability benefits was the result of a conscious decision by the Administrative Committee. Indeed, the only evidence on the matter indicates that the committee was unaware that the payments were being made and that the payments were made without the company's consent. *See* R. 272-73. Under these circumstances it cannot be said that the decision to terminate benefits in July of 1984 was inconsistent with previous actions of the committee. Neither Cameron nor Jordan has provided evidence

---

standard. *See Denton*, 765 F.2d at 1303-04; *Offutt v. Prudential Ins. Co. of America*, 735 F.2d 948, 950 (5th Cir. 1984). This court's decision in *Batchelor* clearly indicates that the proper analysis is now the abuse of discretion standard.

of previous committee actions in handling claims of similarly situated workers. There is no basis in the record for making a finding concerning the uniformity of construction given the plan. Likewise, neither side has presented evidence concerning unanticipated costs; we can make no finding on this issue either.

[3] There is evidence in the record from which we can determine whether the committee's interpretation is consistent with a fair reading of the plan. The provisions governing eligibility for long-term disability benefits under the plan provided:

> V. QUALIFYING FOR BENEFITS
>
> A. The employee must be totally disabled as defined in Section VII and have exhausted all benefits provided by the Company's Short Term Disability Plan.
>
> . . . .
>
> VII. TOTAL DISABILITY DEFINITION
>
> To be considered totally disabled and thereby qualify for benefits, the employee must be unable to perform the duties of his/her job, or of any other job offered by the Company through the Job Placement Program for which he/she is reasonably qualified by training, education, background, or experience.
>
> VIII. CESSATION OF BENEFITS
>
> A. Benefits will be discontinued when the employee is no longer totally disabled as defined in Section VII, as evidenced by a written statement from a physician.
>
> B. Employment by another company, other than for approved rehabilitative purposes, will cause benefits to be terminated.

R. 148-49. A booklet distributed to employees enrolling in the plan explained the eligibility provisions.

> To be considered totally disabled and thereby qualify for benefits, you must be unable to perform the duties of your job or of *any* job which you are reasonably qualified by training, education, background and experience. This includes *any job placement assignment*, in the Bargaining Unit, offered by the Company.
>
> . . . .
>
> Benefits will be discontinued should you recover from your disability to the extent that you can perform job placement assignment or should you become employed elsewhere, other than for rehabilitative purposes as approved by the insurance company.
>
> If your condition improves but you fail to return to work following a medical release and after job placement assignment has been offered by the Company, you will be subject to termination in accordance with the voluntary termination policy.

R. 266.

Cameron contends that we should interpret this language, as did the Administrative Committee, to mean that persons who are capable of performing light duty work are not eligible for disability benefits. Jordan, on the other hand, focuses his argument on the language of Article VII of the plan. It is not contested that Jordan is unable to perform the tasks he previously performed during his employment at Cameron. Jordan thus contends that he is totally disabled unless he can perform "any other job offered by the Company." Because Cameron has not offered any other job, Jordan argues that he is and remains totally disabled under a plain reading of the plan.

Although Jordan's position appears to follow from the language of Article VII, his interpretation ultimately is unpersuasive because it assumes that he has a right to be employed by Cameron. Cameron laid Jordan off in November of 1982, and the record indicates that Jordan did not have sufficient seniority to be invited to return after his physician cleared him for light duty work. Thus, Cameron did not offer Jordan an alternative job placement. Indeed, Cameron could not offer Jordan a new position without violating the rights of other Union members under the terms of the collective bargaining agreement. We are persuaded, therefore, that the language of Article VII is premised on the assumption that an injured worker is entitled to employment. A fair reading of the plan and the accompanying interpretation in the booklet suggests that an injured worker who is not entitled to return to work under the terms of the collective bargaining agreement is no longer disabled when a "written statement from a physician" indicates that the worker is able to perform other jobs for which he is "reasonably qualified by training, education, background, or experience." The statement from Jordan's physician indicates that he was able to perform light duty work, and we conclude that the district court properly determined that Jordan was not entitled to further disability benefits under a fair reading of the plan.

Evidence in the record supports our interpretation of the plan. The most persuasive evidence is the affidavit of Van Lane, the Directing Business Representative for the Union, in which Mr. Lane stated:

> The plan is truly a disability plan, not a plan to provide unemployment compensation, and therefore,

> it is not intended to guarantee that an individual will receive either permanent disability benefits or permanent employment with Cameron. Consequently, the plan includes a job placement program under which employees who are able to perform light duty work within the bargaining unit are no longer eligible for benefits. If an employee is laid off from work as well as being off on disability, he is still eligible to receive benefits until he is able to perform at least light duty work. Such an employee's right to be recalled to the bargaining unit depends on the layoff, recall, and seniority provisions of the collective bargaining agreement, not the disability plan. Generally, whether he is eligible for recall depends upon whether he has enough seniority to hold a job. If he does, he is recalled and assigned light duty work. If not, he remains on layoff, but is no longer eligible for disability benefits and must look for other employment as a means of compensation just like the other employees on layoff.

R. 275-76. An affidavit by the Manager of Industrial Relations for Cameron and an affidavit by the designated administrator of the plan were to the same effect. R. 280-81, 286-87.

In light of this evidence, our own reading of the plan, and the explanation given workers enrolling in the plan, we are persuaded that the Administrative Committee gave the plan its legally correct interpretation. Accordingly, the decision to terminate Jordan's benefits was not an abuse of discretion. The grant of summary judgment was proper.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-86-4472

STEVE JORDAN,
Plaintiff,

vs.

CAMERON IRON WORKES, INC., AND JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Defendants.

(Filed June 2, 1989)

ORDER

Pending before the Court are Defendants' Motion for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment. After having carefully considered both motions and the arguments presented by counsel for both parties, the Court is of the opinion that Defendants' motion should be GRANTED and Plaintiff's motion should be DENIED. In reaching this conclusion, the Court adopts the Defendant's Proposed Findings of Fact and Conclusions of Law (Document #57).

Accordingly, it is hereby ORDERED that Plaintiff's claims for wrongful denial of long-term disability benefits under ERISA are DISMISSED. It is further ORDERED that Plaintiff's claims for breach of the collective bargaining agreement under Section 301 of the LMRA and for

unlawful discrimination under Section 1140 of ERISA are DISMISSED. Furthermore, Plaintiff's claims for damages for mental anguish and emotional distress and for punitive damages are DISMISSED.

SIGNED this 30th day of May, 1989.

/s/ KENNETH M. HOYT
Kenneth M. Hoyt
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-86-4472

STEVE JORDAN,
Plaintiff,

v.

CAMERON IRON WORKS, INC. and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Defendants.

(Filed May 9, 1989)

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, CAMERON IRON WORKS, INC., Defendant in the above-entitled and numbered action, and submits the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff instituted this action seeking disability benefits under a plan incorporated into a collective bargaining agreement. This action is brought under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et. seq., and Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. Plaintiff alleges that Cameron terminated his disability benefits contrary to the terms of the disability plan.

2. The Cameron disability plan resulted from negotiations between Cameron and the International Association of Machinists and Aerospace Workers Local No. 15, the Plaintiff's union.

3. Both Cameron and the union agree that the plan is intended to provide benefits for individuals who are physically unable to work in any type of gainful employment, including light-duty work. They further agree that if an employee is off work as a result of a layoff in addition to being off on disability, he is not eligible for disability benefits once he becomes capable of performing light-duty work. Whether he is actually recalled to the bargaining unit depends upon whether he has enough seniority to hold a position. The beneficiaries of the plan, including Plaintiff, were advised that persons are not eligible for benefits if they can perform light-duty work.

4. In 1982, Plaintiff underwent bone graft surgery to correct a discrepancy in the lengths of his legs which resulted from a motorcycle accident in 1971, approximately ten years before he began working for Cameron.

5. Following the surgery, Plaintiff began receiving monthly benefits of $1,157.00 under Cameron's long-term disability plan.

6. Because of the downturn in the oil industry, Plaintiff was laid off in November 1982, along with hundreds of other employees. Pursuant to the terms of the collective bargaining agreement, the list of employees to be laid off, including Plaintiff, was based upon the seniority provisions of the collective bargaining agreement.

7. While on layoff, Plaintiff continued receiving disability benefits for the next 18 months. In July 1984,

his physician, Dr. Andrew P. Kant, certified that he was physically able to perform light-duty work. Consequently, his benefits were terminated consistent with the provisions of the plan and the mutual intent of Cameron and the union.

8. Although he was able to perform light-duty work in July 1984, Plaintiff did not have enough seniority to be recalled and hold a position in the bargaining unit at Cameron.

9. Plaintiff requested the administrative committee for the long-term disability plan to review the decision to terminate his benefits, and the administrative committee confirmed that he was no longer eligible for benefits.

10. Articles 3 and 4 of the collective bargaining agreement provide administrative procedures for an individual to contest a decision made by the disability administrative committee. These procedures culminate in final and binding arbitration. Although an individual has the right to pursue these procedures even without the assistance of the union, Plaintiff never attempted to do so.

11. Plaintiff has worked as a tractor/trailer driver on a full-time basis since February 1, 1988.

CONCLUSIONS OF LAW

1. This Court has jurisdiction pursuant to 29 U.S.C. § 1331, 29 U.S.C. § 185(a) and 29 U.S.C. § 1132(e).

2. Plaintiff's failure to pursue the grievance and arbitration procedures under the collective bargaining agreement bar his attempt to seek judicial enforcement of any alleged rights under the collective bargaining agreement,

including the disability plan. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

3. Alternatively, Plaintiff has failed to demonstrate that the termination of his disability benefits was arbitrary and capricious. *Firestone Tire and Rubber Co. v. Bruch*, 109 S. Ct. 948 (1989).

Accordingly, judgment is hereby entered for Defendant on all issues, with costs to be taxed against Plaintiff.

Signed this 30th day of May, 1989 at Houston, Texas.

/s/ KENNETH M. HOYT
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-86-4472

STEVE JORDAN,
Plaintiff,

vs.

CAMERON IRON WORKS, INC., AND JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Defendants.

(Filed June 2, 1989)

FINAL JUDGMENT

Summary judgment was granted in favor of Defendant on May 30, 1989. No claims remain to be tried in this case. Plaintiff shall recover nothing from Defendants.

This is a FINAL JUDGMENT.

SIGNED this 31st day of May, 1989.

/s/ KENNETH M. HOYT
Kenneth M. Hoyt
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-86-4472

STEVE JORDAN,
Plaintiff,

v.

CAMERON IRON WORKS, INC. and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Defendants.

(Filed August 9, 1989)

O R D E R

The Court, having considered Plaintiff's Motion for Rehearing and New Trial is of the opinion that Plaintiff's motion should be denied and that the Court's Order and Final Judgment in favor of Cameron entered on June 2, 1989 is affirmed.

SIGNED in Houston, Texas this 7th day of August, 1989.

/s/ KENNETH M. HOYT
United States District Judge

APPENDIX F

CAMERON IRON WORKS, INC.
P. O. Box 1212
Houston, Texas 77251-9002

Neal S. Sutton
General Counsel and Secretary

Area Code 713
939-2813

June 27, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Raymond Dickens, Jr.
Attorney at Law
7887 Katy Freeway
Suite 235
Houston, Texas 77024

Re: Steven Jordan—Long Term Disability Claim

Dear Mr. Dickens:

On June 11, 1986, the Administrative Committee for the Cameron Iron Works, Inc. Long Term Disability Plan for Hourly Employees IAM&AW, Local 15 (the "Plan") met to consider the notice of appeal of denial of benefits to Steven Jordan.

Based upon the applicable provisions of the Plan, the medical information in the file and your submission, the Administrative Committee has denied the appeal and upheld the denial of benefits.

Mr. Jordan was off work from October 7, 1982, to October 27, 1982, for a non-industrial matter that resulted from the removal from his right leg of a rod surgically implanted. The medical reports indicate the injury for which the rod was implanted was sustained in 1971. At the time of his employment and up to the date of the removal of the rod, Mr. Jordan was able and did perform his job. In 1982 he was employed as a process

operator at Cameron's Sealy, Texas facility. Whatever leg shortening or other problems associated with his injury did not prevent him from fully performing his various job duties.

Subsequently, on November 3, 1982, Mr. Jordan underwent surgery for a bone graft to his right leg. There is nothing in the file to indicate this was a necessary procedure. However, this fact was not a basis for the Committee's decision. On November 5, 1982, Mr. Jordan was laid off as part of a Company-wide reduction in force. His layoff was based on his seniority with the Company as set out in the collective bargaining agreement in effect at the time between the Company and IAM&AW Local 15. Mr. Jordan began receiving LTD benefits on December 16, 1982.

Pursuant to the administrative procedures for the Plan and for the collective bargaining agreement, an employee who has been laid off while disabled is not eligible for coverage or benefits once that employee is certified as being able to return to his or her job or to a light duty position.

On April 25, 1983, and July 26, 1983, Dr. Kant stated that Mr. Jordan was capable of performing light duty work. For some reason, unknown to the Company or the Administrative Committee, Prudential continued to pay LTD benefits. Those benefits should not have been paid without the consent of the Company under the terms of the administrative agreement with Prudential. The Company would not have consented to the payment of the benefits had it been consulted as it considers Mr. Jordan to be no longer eligible for benefits after July 26, 1983.

Subsequent reports from Dr. Kant state that Mr. Jordan could never return to work as a truck driver, bulldozer driver or steelworker. At no time did he perform these jobs for Cameron. These subsequent reports do not change the report of July 26, 1983 (and July 13, 1984) that Mr. Jordan was capable of performing light duty work.

Based on the above, the Administrative Committee upholds the denial of benefits effective July 13, 1984. No claim is being made at this time that Mr. Jordan return disability benefits paid for the period of July 26, 1983 to July 13, 1984.

Sincerely yours,

/s/ NEAL S. SUTTON
Neal S. Sutton

NSS:bc

APPENDIX G

Text of Affidavit of Steve Jordan, Petitioner, R139-140

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

I.

My name is Steve Jordan. I am over the age of 21, and I am a resident of Washington County, Texas. I am the Plaintiff in the above cause.

II.

From August of 1980 until November of 1982, I worked as a hand scarfer, buffing machine operator, a large flame crop operator, and abrasive saw operator for Defendant CAMERON IRON WORKS in Houston, Texas. These jobs require a great deal of heavy lifting, stooping, bending and climbing. During that time, I was a member of the International Association of Machinist and Aerospace Workers, Local 15.

III.

On November 4, 1982, prior to the termination of my employment with CAMERON IRON WORKS, I underwent surgery on my right leg to correct a length discrepancy between my right and left leg. That discrepancy caused increasing problems for me at my job, in that it caused me to experience back pain due to my posture as

I performed my various job tasks. While the operation successfully lengthened my leg, and has alleviated much of my back pain, I now experience a substantially greater degree of pain in my right leg than previously, resulting in severe pain when I put any real pressure on it. There is no way that I can perform the types of jobs which I had previously performed during my employment with CAMERON IRON WORKS without experiencing severe and increasing pain. My physician, Dr. Andrew Kant, has diagnosed my leg's condition as permanent, and has recommended that I only perform light sedentery types of jobs, such as clerical or bench-type work. He has expressly forbidden jobs that require repeated bending, stooping, lifting, or climbing.

IV.

I began to draw disability benefits through an insurance plan set up by Defendant CAMERON IRON WORKS, INC., and prior Defendant JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY in December of 1982. I received these benefits until July of 1984. Up to that time, I received $1157.00 per month. The condition of my right leg at that time prevented me, and still prevents me, from working in the type of jobs I performed for CAMERON IRON WORKS.

V.

In July of 1984, I stopped receiving my disability checks from JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY. From that time to the present, I have not received any further payments. As of March 1, 1989, 57 months of payments have not been made for a total principal value of $65,949.00.

VI.

After my disability arose, I was never offered *any* alternative position with CAMERON IRON WORKS. CAMERON has never offered a position to me that would fit the recommendation of Dr. Kant, specifically a light sedentery job. They have represented to myself and to my attorneys that since I was laid off and could perform light sedentery work, they have no further obligation to pay disability payments, regardless of whether they have offered me alternative work fitting my doctor's recommendations. It has been made clear to me that while my leg impairment will be permanent, CAMERON will never honor their obligation under the Plan policy to either pay disability payments or offer an alternative position with their company.

VII.

After my disability payments were discontinued, I spoke to my union representative, Mr. Tuck. He informed me that since I was no longer a member of the union, there was nothing they could do for me.

VIII.

In order to survive financially, I have been forced to work as a truck driver. I am experiencing pain on my job, and I attempt to favor or protect my right leg as much as possible. The pain has been increasing, and I am sure that I will not be able to continue in this type of work for more than 2 or 3 years. While I know that this job is a violation of my doctor's recommendation, I have had no choice. I have taken classes to retrain to become an electrical technician, but after extensive efforts

have been unable to find an employer willing to hire me. To date I have earned approximately $21,500.00 as a truck driver.

IX.

I retained the services of Raymond A. Dickens, Jr., and of C. Greg Goodrum, both licensed attorneys, to assist me in collecting on my disability claims after it was clear that Defendants would not honor their obligations to pay disability benefits to me.

"Further Affiant sayeth not."

/s/ STEVE JORDAN
Steve Jordan, Affiant

APPENDIX H

Text of Affidavit of Dr. Andrew Kant, M.D., R197-198

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

I.

My name is Dr. Andrew Kant, M.D. I am over the age of 21, and I am a resident of Harris County, Texas. I am a licensed physician specializing in Orthopedic Surgery.

II.

On November 4, 1982, I operated on Steve Jordan to lengthen his right femur through a bone graft procedure. Prior to that time, the patient had related to me that he worked at Cameron Iron Works, Inc., in a job that required some heavy lifting, and that his back was beginning to bother him. Mr. Jordan's right leg was substantially shorter than his left leg prior to the operation.

III.

While the operation successfully lengthened his right leg to within 2.4 cm of his left leg, the patient has related to me that he frequently experiences pain in the leg whenever he is required to place any pressure on it. I examined the patient most recently in December of 1988.

IV.

Based on the patient's persistent pain in his leg, as well as on my experience, I have recommended that the patient *not* undertake any job which requires repeated bending, stooping, lifting, or climbing. Attached to this affidavit as Exhibit A and Exhibit B are statements which I filled out and signed, and which were submitted to CAMERON IRON WORKS, INC., in April of 1983, and JOHN HANCOCK INSURANCE CO., in July of 1984. I recommended on those occasions, and I recommend today, that Mr. Jordan pursue employment requiring sedentery work, and not the type of activity which he has informed me was expected of him in his previous work with CAMERON. Mr. Jordan has a significant potential for re-injury of the leg, and he should not be in a job which requires anything other than sedentery work.

"Further Affiant sayeth not."

/s/ ANDREW P. KANT
Andrew P. Kant, M.D., Affiant